

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

HOLLY WISER-CONNOLLY, as  
Independent Executor of the Estate of  
GLEN R. WISER, Deceased; and  
HOLLY WISER-CONNOLLY, as  
Independent Executor of the Estate of  
ELEANOR M. WISER, Deceased,

Plaintiff,

vs.

OSMAN EFENDIC and  
2038463 ONTARIO, INC.,  
d/b/a ELAINES EXPRESS,

Defendants.

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OSMAN EFENDIC and  
2038463 ONTARIO, INC.,  
d/b/a ELAINES EXPRESS,

Counter-Plaintiffs,

vs.

HOLLY WISER-CONNOLLY, as  
Independent Executor of the Estate of  
GLEN R. WISER, Deceased;

Counter-Defendant.

Case No.: 08 C 241

Judge: Ronald A. Guzman

Magistrate: Geraldine Soat Brown

**PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION  
TO STRIKE PLAINTIFF'S FIRST AMENDED COMPLAINT**

NOW COMES the Plaintiff, HOLLY WISER-CONNOLLY, as Independent  
Executor of the Estate of GLEN R. WISER, Deceased, and HOLLY WISER-  
CONNOLLY, as Independent Executor of the Estate of ELEANOR M. WISER,

Deceased, by and through her attorney, EDMUND J. SCANLAN, and as her response to the Motion to Strike Plaintiff's First Amended Complaint filed by the Defendants, OSMAN EFENDIC and 2038463 ONTARIO, INC., d/b/a ELAINES EXPRESS, states as follows:

1. From a reading of the Motion to Strike, it appears that the defendants are moving to strike Paragraph 10(g) of Plaintiff's First Amended Complaint, presumably, although it does not specifically state it, in both Counts I and II of the First Amended Complaint.

2. On July 22, 2008, the deposition of Will County Deputy Sheriff James Wendt was taken. He was the accident reconstructionist for the March 7, 2007 collision.

3. That at Deputy Sheriff James Wendt's deposition, there was marked as Exhibit 4 two citations that he issued to the defendant, OSMAN EFENDIC. A copy of Exhibit 4 is attached hereto as Exhibit A. One of the citations is for violating 625 ILCS 5/15-107, which Deputy Sheriff Wendt testified was for driving a semi-tractor trailer over 55 feet. He testified that the defendants' semi-tractor trailer was 73 feet.

4. Defendants argue that 625 ILCS 5/15-107 has no bearing regarding safety on Illinois state roads, but cites no authority to support such a proposition.

5. Since this incident involves a trailer that was straddling a state highway; namely, Goodenow Road, the length of the trailer and tractor is extremely relevant.

6. Defendants state in Paragraph 14 of their Motion to Strike, "Plaintiff's decedents clearly did not belong to any class the cited regulation was intended to protect from injury or damage, . . . ." There is no authority for such a statement and indeed it

defies common sense to suggest that motor vehicles could be driven at any length on Illinois roads and not pose a danger to the public.

7. Finally, defendants appear to be arguing that plaintiff should not be allowed to introduce evidence or argument, and this is an inappropriate point to be raising in a motion to strike; particularly when we are dealing with notice pleading under the Federal Rules of Civil Procedure.

WHEREFORE, the Plaintiff, HOLLY WISER-CONNOLLY, as Independent Executor of the Estate of GLEN R. WISER, Deceased, and HOLLY WISER-CONNOLLY, as Independent Executor of the Estate of ELEANOR M. WISER, Deceased, respectfully requests this Honorable Court to deny the Defendants' Motion to Strike Plaintiff's First Amended Complaint and to require Defendants to answer Plaintiff's First Amended Complaint.

/s/ Edmund J. Scanlan  
EDMUND J. SCANLAN  
Attorney for Plaintiff, Holly Wiser-Connolly

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the 23<sup>rd</sup> day of July, 2008, he did electronically file the foregoing with the Clerk of the Court using the CM/ECF System which sent notification of such filing to the parties who are registered participants with the System. I hereby certify that a courtesy copy was sent to The Honorable Ronald A. Guzman within one day of the electronic filing pursuant to Local Rule LR5.2.

/s/ Edmund J. Scanlan  
Edmund J. Scanlan  
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